Appendix A

No. 104,234

IN THE COUNTY COURT AT LAW NO. 1
OF TRAVIS COUNTY, TEXAS

STATE OF TEXAS

vs.

LEROY POWELL

JUDGMENT

On the 5th day of April, 1967, this cause was called for trial and both parties appeared and the defendant, Leroy Powell, being represented by his attorney, Don L. Davis, announced ready for trial, and the defendant, Leroy Powell, pleaded not guilty to the information herein and waived trial by jury, and submitted the decision of the cause to the court. The court having heard the information herein read, and the defendant's plea of not guilty thereto and the evidence adduced, finds that the said defendant is GUILTY of the offense charged in the information.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the defendant, Leroy Powell, is GUILTY of the offense of being in a state of intoxication in a public place, and the Court having heard evidence on the question of punishment, fixed the punishment by payment of a fine in the amount of Fifty and no/100 ($50.00) Dollars, for which let execution issue, and the defendant is remanded to jail

to await the further orders of the court, to all of which action the defendant in open court duly excepted.

Ordered Entered this 7th day of April, 1967.

JERRY DELLANA, Judge
County Court at Law No. 1
Travis County, Texas

No. 104,234

IN THE COUNTY COURT AT LAW NO. 1
OF TRAVIS COUNTY, TEXAS

STATE OF TEXAS

vs.

LEROY POWELL

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In compliance with the request of Leroy Powell, defendant herein, the Court hereby files the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. That chronic alcoholism is a disease which destroys the afflicted person's will power to resist the constant, excessive consumption of alcohol.

2. That a chronic alcoholic does not appear in public by his own volition but under a compulsion symptomatic of the disease of chronic alcoholism.

3. That Leroy Powell, defendant herein, is a chronic alcoholic who is afflicted with the disease of chronic alcoholism.

CONCLUSIONS OF LAW

1. The fact that a person is a chronic alcoholic afflicted with the disease of chronic alcoholism, is not a defense to being charged with the offense of getting drunk or being found in a state of intoxication in any public place under Art. 477 of the Texas Penal Code.

Signed and Entered this 5th day of April, 1967.

JERRY DELLANA, Judge
County Court at Law No. 1
Travis County, Texas

Appendix B

No. 104,234

IN THE COUNTY COURT AT LAW NO. 1
OF TRAVIS COUNTY, TEXAS

STATE OF TEXAS

vs.

LEROY POWELL

MOTION TO QUASH THE COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Leroy Powell, defendant in the above entitled and numbered cause, and moves the Court to quash the complaint filed herein and as grounds therefor would show the Court as follows:

1.

The complaint charges the defendant with being drunk or being found in a state of intoxication in a public place under the provisions of Art. 477 of the Texas Penal Code.

2.

The defendant is afflicted with the disease of chronic alcoholism which has destroyed the power of his will to resist the constant, excessive consumption of alcohol; his appearance in public in that condition is not of his own volition, but a compulsion symptomatic of the disease of chronic alcoholism.

3.

Art. 477 of the Texas Penal Code is unconstitutional because it punishes the defendant for being afflicted with the disease of chronic alcoholism which is "cruel and unusual punishment" in violation of the rights and privileges guaranteed the defendant by the Eighth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, premises considered, defendant respectfully prays this Honorable Court to set this motion for hearing and that after hearing the evidence in support of said motion that the complaint filed herein against Leroy Powell be quashed as being based upon a statute which is unconstitutional under the Eighth and Fourteenth Amendments of the United States Constitution.

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Austin, Texas 78701
By DON L. DAVIS

Attorneys for Defendant

No. 104,234

IN THE COUNTY COURT AT LAW NO. 1
OF TRAVIS COUNTY, TEXAS

STATE OF TEXAS

VS.

LEROY POWELL

MOTION FOR JUDGMENT

COMES NOW Leroy Powell, defendant in the above entitled and numbered cause, at the close of the evidence presented against him by the State and at the conclusion of the evidence offered in his defense, but prior to announcement or entry of judgment by the court, and moves the court to find and enter judgment that Leroy Powell is not guilty of the offense with which he is charged, and as grounds therefor would show as follows:

1.

Defendant stands charged with being "drunk" or being "found in a state of intoxication" in a "public place" under the provisions of Art. 477 of the Texas Penal Code.

2.

Defendant's defense to this charge is based upon the Eighth Amendment to the United States Constitution which is made applicable to the State of Texas under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and

which bars the infliction of "cruel and unusual" punishment.

3.

The defendant is afflicted with the disease of chronic alcholism which has destroyed the power of his will to resist the constant, excessive consumption of alcohol; his appearance in public in that condition is not of his own volition, but a compulsion symptomatic of the disease of chronic alcoholism and to stigmatize him as a criminal for this act is "cruel and unusual punishment" in violation of the rights and privileges guaranteed the defendant by the Eighth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, premises considered, defendant respectfully prays this Honorable Court to find and enter judgment that Leroy Powell is not guilty of the offense with which he is charged.

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By DON L. DAVIS
Attorneys for Defendant

No. 104,234

IN THE COUNTY COURT AT LAW NO. 1
OF TRAVIS COUNTY, TEXAS

STATE OF TEXAS

VS.

LEROY POWELL

AMENDED MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Leroy Powell, defendant in the above entitled and numbered cause, and requests leave to file this his Amended Motion for New Trial, and moves the court to set aside the judgment herein entered against him on the 5th day of April, 1967, and grant him a new trial and as grounds therefor would show the court as follows:

1.

The defendant is a citizen of the United States.

2.

The Court has made and filed herein the following findings of fact:

"1. That chronic alcoholism is a disease which destroys the afflicted person's will power to

resist the constant, excessive consumption of alcohol.

2. That a chronic alcoholic does not appear in public by his own volition but under a compulsion symptomatic of the disease of chronic alcoholism.

3. That Leroy Powell, defendant herein, is a chronic alcoholic who is afflicted with the disease of chronic alcoholism."

3.

The defendant has been found guilty of the offense of being drunk or being found in a state of intoxication in a public place under the provisions of Art. 477 of the Texas Penal Code.

4.

The trial court erred in finding and entering judgment herein that the defendant was guilty because the defendant is afflicted with the disease of chronic alcoholism which has destroyed the power of his will to resist the constant, excessive consumption of alcohol, the defendant's appearance in a public place in a state of intoxication was not of his own volition, but was a compulsion symptomatic of the disease of chronic alcoholism and to stigmatize him as a criminal for this act is "cruel and unusual punishment" in violation of the rights and privileges guaranteed the defendant by the Eighth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, premises considered, defendant respectfully prays this Honorable Court to set aside the judgment herein and grant him a new trial.

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By DON L. DAVIS

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